IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

FAO.No. 275 of 2006()

AGAINST THE ORDER DATED 31/05/2006 IN IA.3288/95 & IA.3289/95 IN OS.664/1991 of PRINCIPAL SUB COURT,ERNAKULAM

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: APPELLANT/PETITIONER/DEFENDANTS

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1. ELSON MANI,
S/O.MANI, ROSE COTTAGE, CHOLATHADAM,
POONJAR, KOTTAYAM DISTRICT.

2. A.M.VARGHESE, S/O.MANI,
RESIDING AT DO. DO.

3. MRS.ROSCILY VARGHESE,
W/O.A.H.VARGHESE,
RESIDING AT DO. DO.

4. MRS.ANNAMMA MANI, W/O.MANI,
ANIKKASSERY HOUSE CHELAD P.O.,
KOTHAMANGALAM.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS: PLAINTIFF

ITTIACHAN JACOB,
S/O.P.V.ITTIACHAN,
PAYYAPPILLIL HOUSE, THIRUVANKULAM DESOM,
ERNAKULAM.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 23/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M. RAMACHANDRAN & A.K. BASHEER, JJ.

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F.A.O.NO.275 OF 2006

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DATED THIS THE 23RD DAY OF NOVEMBER, 2006.

JUDGMENT

Basheer, J.

The appellants are the defendants in a suit for recovery of money. The suit was decreed ex-parte on February 10, 1993. According to the appellants, they came to know about the ex-parte decree only when they received notice in the execution petition. Therefore, they filed an application under Order IX Rule 13 of the Code of Civil Procedure along with a petition to condone the delay in filing the same. The court below dismissed the applications holding that the appellants/defendants were guilty of laches and that there was no justifiable reason either to condone the delay or to set aside the ex-parte decree. Hence, the appeal.

2. We have heard learned counsel for the appellants and perused the order passed by the court below. As noticed earlier, the ex-parte decree was passed on February 10, 1993. The court below noticed that the defendants had remained absent on the day when the case was listed for trial. The petition to set aside the ex-parte decree was filed only on June 30, 1995, after a lapse of more than 2 years and 4 months. The contention raised by the appellants that they had come to know about the ex-parte decree only when they received notice in the execution petition, was disbelieved by the court below. The affidavit filed by the appellants along with the two applications was found to be totally unsatisfactory.

The delay was not at all explained properly. The court below found that there were no bonafides in the applications submitted by the appellants.

Having heard learned counsel for the appellants and having perused the materials on record, we do not find any merit in this appeal. The court below, in our view, was justified in dismissing the two applications. The appeal fails. It is accordingly dismissed in limine.

(M.Ramachandran, Judge.)

(A.K. Basheer, Judge.)

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